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OFFICE OF PETITIONS

In re Application of :
Barrett, et al. : DECISION ON APPLICATION
Application No. 09/675,525 : FOR PATENT TERM ADJUSTMENT
Filed: September 29, 2000 :
Atty. Dkt. No.: 019282-000210US :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)," filed July 17, 2005.

The application for patent term adjustment under 37 CFR 1.705(b) is hereby **GRANTED TO THE EXTENT INDICATED HEREIN.**

The correct patent term adjustment (PTA) at the time of the allowance is 310 days. The Office will adjust the PAIR screen to reflect that the PTA determination at the time of mailing of the Notice of Allowance reflects an adjustment of 310 days. A copy of the updated PAIR screen showing the correct determination is enclosed.

Applicants request that the Determination of Patent Term Adjustment be corrected from 0 days, as indicated on the Determination of Patent Term Adjustment mailed April 14, 2005, to an adjustment of 657 days.

A review of the application history reveals that as of the time of allowance, an adjustment of 565 days can be attributed to the Office. An adjustment of 413 days can be attributed to the Office in accordance with 37 CFR 1.702(a)(1) and 1.703(a)(1), as acknowledged by applicants.

A further adjustment of 152 days in accordance with 37 CFR 1.702(a)(2) and 1.703(a)(2) can be attributed to the Office in connection with the Notice of Non-Responsive Amendment mailed June 3, 2004. The adjustment began January 4, 2004, the day after the date that is four months after the date that the response to the non-final Office action was submitted on September 3, 2003, and ended June 3, 2004, the date the Notice of Non-Compliant Amendment was mailed.

The adjustment of 565 is reduced a total of 255 days for applicants' delays. Specifically, a reduction of 73 days in accordance with 37 CFR 1.704(c)(7) can be attributed to applicants in connection with the reply submitted April 12, 2002. Applicant's initial reply filed January 29, 2002 contained an omission within the meaning of 37 CFR 1.704(c)(7). Accordingly, the reduction began January 30, 2002, the day after the date that the reply containing the omission was filed, and ended April 12, 2002, the date the paper correcting the omission was filed.

The Office errantly reduced the adjustment 180 days in connection with the copy of the reply, originally submitted September 3, 2003, filed on March 1, 2004. This reduction has been withdrawn.

However, in accordance with 37 CFR 1.704(c)(7), the adjustment of 565 days is further reduced 119 days in connection with the reply to the non-final Office action mailed June 3, 2003. A reply to the Office communication mailed June 3, 2003 was received March 1, 2004. The reply contained an omission within the meaning of 37 CFR 1.704(c)(7). Accordingly, the reduction began March 2, 2004, the day after the date the copy of the reply having an omission was filed, and ended June 28, 2004, the date that the reply correcting the omission was submitted.

The adjustment was further reduced 58 days in accordance with 37 CFR 1.704(c)(8), as acknowledged by applicants.

The adjustment was further reduced 5 days in accordance with 37 CFR 1.704(b), as acknowledged by applicants.

Applicants further argue that the Office will have failed to issue a patent within three years of the filing date of the application. A decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term for Office failure to issue the patent within three years. See, 37 CFR 1.703(b).

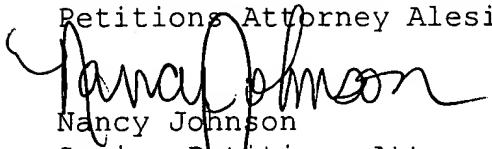
Applicants are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within three years. A copy of this decision should accompany the request. Applicants may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of 37 CFR 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

In view thereof, at the time of allowance, the application was entitled to an adjustment of 310 days (565-255).

Receipt is hereby acknowledged of the required Patent Term Adjustment application fee of \$200.00.

This application is being forwarded to the Publications Division for processing into a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.



Nancy Johnson
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Office of Petitions
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Adjustment PAIR Calculation